

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CAROL MONTAGANO,	:	CIVIL ACTION NO. 16-9375 (MLC)
as legal guardian and on behalf of	:	
WENDY GIANO,	:	MEMORANDUM OPINION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
SAFECO INSURANCE COMPANY	:	
OF AMERICA,	:	
	:	
Defendant.	:	
_____	:	

COOPER, District Judge

Plaintiff Carol Montagano, as legal guardian and on behalf of Wendy Giano, filed suit against Defendant Safeco Insurance Company of America. (Dkt. 1.)¹ Defendant filed this motion to dismiss. (Dkt. 4.) In response to Defendant’s motion to dismiss, Plaintiff filed an Amended Complaint. (Dkt. 5.) In a March 13, 2017 letter, Plaintiff also asked this Court to deny the motion to dismiss as moot. (Dkt. 6.) No opposition to the letter was filed.

We will deny the motion to dismiss as moot because it dealt with the original Complaint, and the timely filed Amended Complaint is now the operative pleading.

A party may amend its pleading once as “a matter of course” within “21 days after service of a motion under Rule 12(b).” Fed. R. Civ. P. 15(a)(1)(B). At that point, the

¹ The Court will cite to the documents filed on the Electronic Case Filing System (“ECF”) by the designation of “dkt.” Pincites reference ECF pagination.

amended complaint “supersedes the original version in providing the blueprint for the future course of a lawsuit.” See Snyder v. Pascack Valley Hosp., 303 F.3d 271, 276 (3d Cir. 2002).

Plaintiff’s Amended Complaint was timely filed. Rule 15(a)(1)(B) permits a party to amend its pleading “as a matter of course” within twenty-one days after service of a motion under Rule 12(b). Defendant filed a motion to dismiss on February 22, 2017, and Plaintiff filed the Amended Complaint on March 6, 2017. The Amended Complaint (dkt. 5) is now the operative pleading in this matter. See Snyder, 303 F.3d at 276.

The filing of the Amended Complaint mooted Defendant’s motion to dismiss the original Complaint. See Croker v. Applica Consumer Prods., Inc., No. 05-3054, 2006 U.S. Dist. LEXIS 14464, at *1 (D.N.J. Mar. 10, 2006) (“[B]ecause Plaintiffs have now amended their Complaint, Defendants’ motion to dismiss is moot and will be denied without prejudice.”). See also Harlow v. Chanree Constr. Co., No. 16-8360, 2017 U.S. Dist. LEXIS 22711, at *2 (D.N.J. Feb. 17, 2017); Harnish v. Widener Univ. School of Law, No. 12-608, 2012 U.S. Dist. LEXIS 92375, at *6–7 (D.N.J. July 3, 2012).

Because Defendant’s motion to dismiss the original Complaint is now moot, we will deny the motion without prejudice.²

We will enter an appropriate order.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge

Dated: March 31, 2017

² Defendant has since moved to dismiss the Amended Complaint (dkt. 7), and Plaintiff will have the opportunity to brief her opposition. See Croker, 2006 U.S. Dist. LEXIS 14464, at *5–6.